

### REMARKS

This responds to the Office Action dated May 18, 2006. Claims 11, 35, 38, 46, 48, and 50 are amended. No claims are canceled. Claims 51-52 are added. As a result, claims 1-22, 35-41, 46, and 48-52 are now pending in this patent application.

#### §103 Rejection of the Claims

1. Claims 1-19, 22, 35-38, 40-41, 46, and 48-50 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Russo et al., (U.S. Patent No. 5,807,336) in view of Naiki (U.S. Patent No. 7,039,426). Applicant respectfully traverses.

#### Concerning claims 1-10:

The Office Action admits that “Russo does not expressly teach jamming the communication” between the medical device and the external device, as recited or incorporated in these claims. Instead, the Office Action attempts to rely on Naiki to establish this claim element that is missing in Russo. The Office Action asserts that “Naiki teaches transmitting prohibiting signal to medical apparatus (cardiac pace maker) (see col. 8, line 54-68 and figs. 2-4).” (Office Action at 3.) Applicant respectfully submits that this is incorrect. The cited portions of Naiki apparently teaches transmitting a prohibiting signal *from* a medical apparatus 70. Moreover, Naiki makes clear that the prohibiting signal is used to inhibit portable information apparatuses (e.g., mobile telephones, etc.) in the vicinity of a medical apparatus or airplane that is susceptible to electromagnetic waves from the portable information device, rather than to “jam the communications between the medical device and the external device,” as similarly recited or incorporated in these claims. (See Naiki at col. 8, lines 53-68.) Therefore, Russo and/or Naiki fail to disclose all elements recited or incorporated in these claims.

Moreover, Naiki actually even clearly and expressly teaches away from these claims. The cited portion of Naiki also states:

In such instances, the communication prohibition signal and/or the communication permission signal transmitted from the prohibition signal transmitter 71 *are/is weak enough not to influence the operations of the apparatus 70 itself*. . .

(Naiki at col. 8, lines 57-61 (emphasis added).) This language makes clear that Naiki cannot meet the present claim language because it expressly teaches away from influencing the operation of the medical device, whereas the present claims involve jamming the communications between the medical device and the external device.

Thus, because Russo and/or Naiki fail to disclose all elements of these claims, and further because Naiki actually expressly teaches away from these claims, Applicant respectfully submits that no *prima facie* case of obviousness exists with respect to these claims. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

Concerning claims 11-19, 22, and 50:

Applicant cannot find in the cited portions of the cited references any disclosure, teaching, or suggestion of inhibiting communications between an implantable medical device and an external device, as presently similarly recited or incorporated in these claims. Instead, the cited portions of Russo apparently merely pertain to data communication over an external link 38 between two external modems 30 and 22, which are respectively connected to an external infusion pump 12 and an external remote monitor controller 20 disposed at first and second room locations (*see* Russo at Abstract and Fig. 1). Moreover, Naiki fails to cure this defect in Russo because, as discussed above, Naiki apparently is actually directed toward inhibiting nearby cellphones, and Naiki expressly teaches away from having any effect on the medical device.

Thus, because Russo and/or Naiki fail to disclose all elements of these claims, and further because Naiki actually expressly teaches away from these claims, Applicant respectfully submits that no *prima facie* case of obviousness exists with respect to these claims. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

Concerning claims 35-37:

Applicant cannot find in the cited portions of the cited references any disclosure, teaching, or suggestion of inhibiting communications between an implantable medical device and a remote external device, as presently similarly recited or incorporated in these claims. Instead, the cited portions of Russo apparently merely pertain to data communication over an external link 38 between two external modems 30 and 22, which are respectively connected to an external infusion pump 12 and an external remote monitor controller 20 disposed at first and second room locations (*see* Russo at Abstract and Fig. 1). Moreover, Naiki fails to cure this

defect in Russo because, as discussed above, Naiki apparently is actually directed toward inhibiting nearby cell phones, and Naiki expressly teaches away from having any effect on the medical device.

Thus, because Russo and/or Naiki fail to disclose all elements of these claims, and further because Naiki actually expressly teaches away from these claims, Applicant respectfully submits that no *prima facie* case of obviousness exists with respect to these claims. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

Concerning claims 38 and 40-41:

Applicant cannot find in the cited portions of the cited references any disclosure, teaching, or suggestion of inhibiting data transmission based on an input detected at the at least one sensor that also detects physiological information about the patient, as similarly presently recited or incorporated in these claims. Accordingly, because Applicant cannot find all claim elements in the cited portions of the cited reference, Applicant respectfully submits that no *prima facie* case of obviousness presently exists with respect to such claims. Therefore, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

Concerning claim 46:

Applicant cannot find in the cited portions of the cited references any disclosure, teaching, or suggestion of an external repeater device for communicating with an implantable medical device, as presently similarly recited in this claim. As discussed above, the cited portions of Russo apparently merely pertain to data communication over an external link 38 between two external modems 30 and 22, which are respectively connected to an external infusion pump 12 and an external remote monitor controller 20 disposed at first and second room locations (*see* Russo at Abstract and Fig. 1). Moreover, Naiki fails to cure this defect in Russo because, as discussed above, Naiki apparently is actually directed toward inhibiting nearby cell phones, and Naiki expressly teaches away from having any effect on the medical device.

Thus, because Russo and/or Naiki fail to disclose all elements of this claim, and further because Naiki actually expressly teaches away from this claim, Applicant respectfully submits that no *prima facie* case of obviousness exists with respect to this claim. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of this claim.

Concerning claims 48-49:

Applicant cannot find in the cited portions of the cited references any disclosure, teaching, or suggestion of a blocking device for preventing an implantable medical device from transferring data, comprising a transmitter generating a blocking signal that is received by the implantable medical device, and wherein the blocking signal being received at the implantable medical device results in no transfer of data from the implantable medical device, as presently similarly recited or incorporated in these claims. As discussed above, the cited portions of Russo apparently merely pertain to data communication over an external link 38 between two external modems 30 and 22, which are respectively connected to an external infusion pump 12 and an external remote monitor controller 20 disposed at first and second room locations (*see* Russo at Abstract and Fig. 1). Moreover, Naiki fails to cure this defect in Russo because, as discussed above, Naiki apparently is actually directed toward inhibiting nearby cell phones, and Naiki expressly teaches away from having any effect on the medical device.

Thus, because Russo and/or Naiki fail to disclose all elements of these claims, and further because Naiki actually expressly teaches away from these claims, Applicant respectfully submits that no *prima facie* case of obviousness exists with respect to these claims. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

2. Claims 20-21, and 39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Russo et al., (U.S. Patent No. 5,807,336) in view of Naiki (U.S. Patent No. 7,039,426) as applied to claims 1-19 above, and further in view of Von Arx et al., (U.S. Patent No. 6,985,773). Applicant respectfully traverses.

Applicant's traversal is made on the grounds that Von Arx et al. is disqualified by the American Inventors Protection Act (AIPA) of 1999 from being used as a reference against the present patent application under 35 U.S.C. § 102(e)/103. Applicant declares that, to the best of Applicant's knowledge, at the time the present invention was made, the present patent application and the application for Von Arx et al. U.S. Patent 6,985,773 were owned by the same entity, that is, Cardiac Pacemakers, Inc. The application for the Von Arx et al. patent was apparently filed on Feb. 7, 2000, and did not publish until August 7, 2003, and did not issue as a patent until January 10, 2006. By contrast, Applicant notes that the present patent application

was filed on June 23, 2003, before the publication date of the application for the Von Arx et al. patent. Applicant believes, therefore, that Von Arx et al. is disqualified as a reference for the purpose of 102(e)/103(a) under 35 U.S.C. 103(c). Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of claims 20-21, and 39 of the present patent application insofar as it relies on the Von Arx et al. reference.

*New Claims*

Applicant has added new claims 51-52 to more particularly point out and distinctly claim certain aspects of the present subject matter. Support for such new claims is found at page 21 of the present patent application. Applicant respectfully submits that such claims are allowable for the reasons discussed above with respect to their base claim 1. Accordingly, Applicant respectfully requests allowance of these new claims 51-52.

*Reservation of Rights; References Not Relied Upon*

Applicant need not address any references that were made of record but not relied upon as a basis of rejection. Applicant does not admit that such references are prior art or applicable against the present claims, and Applicant reserves the right to address such references if they are subsequently made a basis of rejection. Applicant reserves the right to swear behind any references which are cited in a rejection under 35 U.S.C. 102(a), 102(e), 103/102(a), and 103/102(e), such as provided under 37 C.F.R. § 1.131 or otherwise. Statements distinguishing the claimed subject matter over the cited documents are not to be interpreted as admissions that the documents used as references are prior art.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6951 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

SCOTT T. MAZAR

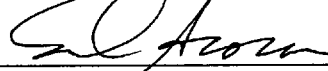
By his Representatives,

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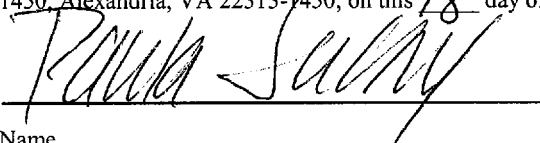
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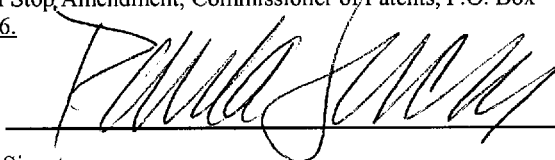
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Date August 18, 2006 By   
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 18 day of August, 2006.

  
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